

4 Am. Jur. 2d Appearance Summary

American Jurisprudence, Second Edition | May 2021 Update

Appearance

Marie K. Pesando, J.D.

[Correlation Table](#)

Summary

Scope:

This title defines appearances in civil cases, including general and special appearances, and focuses on the decline of the importance of such terms under the Federal Rules of Civil Procedure and many state counterparts. It also discusses grounds for the withdrawal of an appearance.

Federal Aspects:

Appearances are affected by [Fed. R. Civ. P. 12\(b\)](#) in courts where that rule is in effect.

Treated Elsewhere:

Appearance as amicus curiae, see [Am. Jur. 2d, Amicus Curiae §§ 2 to 4](#)

Appearance as supporting jurisdiction in divorce proceeding, see [Am. Jur. 2d, Divorce and Separation § 579](#)

Appearance by foreign corporation, see [Am. Jur. 2d, Foreign Corporations § 437](#)

Appearance by witnesses, see [Am. Jur. 2d, Witnesses §§ 4, 5](#)

Appearance for the purpose of requiring notice of an application for a default judgment against a party who has appeared, see [Am. Jur. 2d, Judgments § 273](#)

Appearance in administrative proceedings, see [Am. Jur. 2d, Administrative Law § 283](#)

Appearance in admiralty cases, see [Am. Jur. 2d, Admiralty § 154](#)

Appearance of guardian for ward, see [Am. Jur. 2d, Guardian and Ward § 160](#)

Appearance on behalf of infant, see [Am. Jur. 2d, Infants §§ 191, 192](#)

Appearance on behalf of partnership, see [Am. Jur. 2d, Partnership § 462](#)

Authority of an attorney to appear, see [Am. Jur. 2d, Attorneys at Law § 153](#)

Effect of appearance on running of statute of limitations, see [Am. Jur. 2d, Limitation of Actions § 227](#)

Notice to appear at deportation hearing, see [Am. Jur. 2d, Aliens and Citizens §§ 1591 to 1594](#)

Process, generally, see [Am. Jur. 2d, Process §§ 1 et seq.](#)

Shareholder's waiver of meeting notice by appearance, see [Am. Jur. 2d, Corporations §§ 808 to 810](#)

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4 Am. Jur. 2d Appearance § 1

American Jurisprudence, Second Edition | May 2021 Update


Appearance

Marie K. Pesando, J.D.

§ 1. What constitutes appearance

[Topic Summary](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Appearance](#)  1, 8(1), 11.1

There is but one way to become a party litigant in a court and that is by appearing in the proceedings.¹ An "appearance" is a coming into court as party to a suit, either in person or by attorney, whether as plaintiff or defendant.² An "appearance" in an action involves some submission or presentation to the court by which a party shows his intention to submit himself to the jurisdiction of the court;³ the determining factor is whether he takes a part in the particular action which in some manner recognizes the authority of the court to proceed.⁴ A party "appears" when he takes any action, other than objecting to personal jurisdiction, that recognizes the case is pending in court.⁵ Thus, an appearance requires a presentation or submission to the court where the lawsuit is pending.⁶ "Appearance" is construed liberally⁷ or broadly, and includes the defendant's seeking, taking, or agreeing to some step or proceeding in the cause beneficial to himself or detrimental to plaintiff.⁸ To constitute an appearance, one must seek judgment or adjudication on some question; although an act may relate to a pending case, it does not constitute a general appearance if it in no way recognizes that the cause is properly pending or that the court has jurisdiction, and no affirmative action is sought from the court.⁹ Thus, the mere presence of a party or his attorney in the courtroom at the time of a hearing or a trial, where neither participates in the prosecution or defense of the action, is not an appearance.¹⁰ However, a defendant does not have to respond directly to a complaint in order for his actions to constitute an appearance.¹¹

An appearance may be made by filing an answer or other pleading, or by voluntarily appearing for and participating in a trial.¹² While in some jurisdictions, a defendant appears when he or she makes a motion which has the effect of extending the time to answer, such as a motion to dismiss,¹³ in other jurisdictions, a request for an extension of the time to file an answer is not a voluntary appearance.¹⁴

Whether a party has appeared is generally a question of intention, as evidenced by acts or conduct, such as the indication of a purpose to defend.¹⁵ However, mere intent to defend is not enough to qualify as an appearance in court; the defendant must go beyond merely acknowledging that a dispute exists and instead acknowledge that a dispute exists in court.¹⁶ While an appearance does not necessarily require the filing of responsive papers or actual in-court efforts, it does require, at minimum,

that the defendant engage in some sort of conduct clearly indicating an intent to defend the suit.¹⁷ Parties must communicate their intention to dispute the action in order to make an appearance.¹⁸

An appearance may be accomplished informally,¹⁹ such as by written or oral statements to the plaintiff in an action.²⁰ The question of whether actions are sufficient to constitute an informal appearance will generally be a question of fact to be determined by the trial court.²¹ The following actions have been held to constitute an appearance—

— an answer, which disputed the claims made against the defendant in the complaint and which included his telephone number, even if he failed to give a valid address for service of process.²²

— participation in a hearing for a temporary order.²³

— a pro se answer in the form of a signed letter that identifies the parties, the case, and the defendant's current address.²⁴

— filing a motion to stay on the basis of principles of comity.²⁵

The following actions have been deemed insufficient to constitute an appearance—

— the filing of a suggestion of death.²⁶

— a telephone call and e-mail from defendant's attorney.²⁷

— the filing of a statement of claim against an estate.²⁸

Practice Tip:

A voluntary appearance takes effect at the time of its filing, rather than at the time it is signed.²⁹

CUMULATIVE SUPPLEMENT

Cases:

A government employer's entry of appearance in a case is not deemed an entry of appearance by its employees sued in their official capacities. *Cheeks v. Belmar*, 331 F.R.D. 499, 103 Fed. R. Serv. 3d 1148 (E.D. Mo. 2019).

[END OF SUPPLEMENT]

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Footnotes

1 [In re General Election 2014](#), 111 A.3d 785 (Pa. Commw. Ct. 2015).

2 Town of Coventry v. Baird Properties, LLC., 13 A.3d 614 (R.I. 2011).
3 Ex parte Phillips, 900 So. 2d 412 (Ala. 2004); BYS Inc. v. Smoudi, 228 Ariz. 573, 269 P.3d 1197 (Ct. App.
Div. 1 2012), as amended, (Mar. 13, 2012); Summers v. Wasdin, 337 Ga. App. 671, 788 S.E.2d 573 (2016);
Howard v. Howard, 2010 ME 83, 2 A.3d 318 (Me. 2010); In re Guardianship of Estate of Lewis, 45 So. 3d
313 (Miss. Ct. App. 2010); Wiley v. L3 Communications Vertex Aerospace, LLC, 795 S.E.2d 580 (N.C. Ct.
App. 2016), review denied, 369 N.C. 523, 797 S.E.2d 17 (2017).
4 Sierra Club v. Napa County Bd. of Sup'rs, 205 Cal. App. 4th 162, 139 Cal. Rptr. 3d 897 (1st Dist. 2012).
5 Matter of 2000 Peterbilt Tractor & Trailer, WA LIC: 19601RP, VIN: 1XPSD69X2YD479117, 240 Ariz.
450, 381 P.3d 244 (Ct. App. Div. 1 2016).
6 Philos Technologies, Inc. v. Philos & D, Inc., 645 F.3d 851, 79 Fed. R. Serv. 3d 1390 (7th Cir. 2011).
7 BYS Inc. v. Smoudi, 228 Ariz. 573, 269 P.3d 1197 (Ct. App. Div. 1 2012), as amended, (Mar. 13, 2012).
8 Wiley v. L3 Communications Vertex Aerospace, LLC, 795 S.E.2d 580 (N.C. Ct. App. 2016), review denied,
369 N.C. 523, 797 S.E.2d 17 (2017); Blair-Arch v. Arch, 2014 SD 94, 857 N.W.2d 874 (S.D. 2014).
9 In re Texas Dept. of Family and Protective Services, 415 S.W.3d 522 (Tex. App. Houston 1st Dist. 2013).
10 In re Texas Dept. of Family and Protective Services, 415 S.W.3d 522 (Tex. App. Houston 1st Dist. 2013).
11 Wiley v. L3 Communications Vertex Aerospace, LLC, 795 S.E.2d 580 (N.C. Ct. App. 2016), review denied,
369 N.C. 523, 797 S.E.2d 17 (2017).
12 D.D. v. Calhoun County Dept. of Human Resources, 81 So. 3d 377 (Ala. Civ. App. 2011).
13 Philos Technologies, Inc. v. Philos & D, Inc., 645 F.3d 851, 79 Fed. R. Serv. 3d 1390 (7th Cir. 2011); Paulus
v. Christopher Vacirca, Inc., 128 A.D.3d 116, 6 N.Y.S.3d 572 (2d Dep't 2015).
14 Fisher v. DeCarvalho, 298 Kan. 482, 314 P.3d 214 (2013).
15 Ellison v. Process Systems Inc. Const. Co., 112 Wash. App. 636, 50 P.3d 658 (Div. 3 2002).
16 Servatron, Inc. v. Intelligent Wireless Products, Inc., 186 Wash. App. 666, 346 P.3d 831 (Div. 3 2015).
17 Philos Technologies, Inc. v. Philos & D, Inc., 645 F.3d 851, 79 Fed. R. Serv. 3d 1390 (7th Cir. 2011).
18 Pearson v. Browning, 106 So. 3d 845 (Miss. Ct. App. 2012); Gustafson v. Gustafson, 2014 ND 8, 841
N.W.2d 743 (N.D. 2014).
19 Morin v. Burris, 160 Wash. 2d 745, 161 P.3d 956 (2007).
20 Northwest Cascade, Inc. v. Unique Const., Inc., 187 Wash. App. 685, 351 P.3d 172 (Div. 2 2015).
21 Air Machine Com SRL v. Superior Court, 186 Cal. App. 4th 414, 112 Cal. Rptr. 3d 482 (4th Dist. 2010);
Colacurcio v. Burger, 110 Wash. App. 488, 41 P.3d 506 (Div. 1 2002).
22 Cornelius v. Browning, 85 So. 3d 954 (Ala. 2011).
23 Schweigert v. Schweigert, 2015 OK 20, 348 P.3d 696 (Okla. 2015).
24 In re R.K.P., 417 S.W.3d 544 (Tex. App. El Paso 2013).
25 Wamsley v. Nodak Mut. Ins. Co., 2008 MT 56, 341 Mont. 467, 178 P.3d 102 (2008).
26 Hegwer v. Edwards, 527 S.W.3d 337 (Tex. App. Dallas 2017).
27 Gustafson v. Gustafson, 2014 ND 8, 841 N.W.2d 743 (N.D. 2014).
28 Baillargeon v. Sewell, 33 So. 3d 130 (Fla. 2d DCA 2010).
29 Johnson v. Johnson, 282 Neb. 42, 803 N.W.2d 420 (2011).

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4 Am. Jur. 2d Appearance § 2

American Jurisprudence, Second Edition | May 2021 Update

Appearance

Marie K. Pesando, J.D.

§ 2. General or special appearance

[Topic Summary](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Appearance](#)  9(1) to 10

Forms

Forms relating to general appearances, generally, see Am. Jur. Pleading and Practice Forms, Appearance [\[Westlaw®\(r\): Search Query\]](#)

Forms relating to special appearances, generally, see Am. Jur. Pleading and Practice Forms, Appearance [\[Westlaw®\(r\): Search Query\]](#)

Appearances have been classified as either general or special.¹ An appearance is special when the defendant appears for the purpose of objecting to the jurisdiction of the court over the defendant's person, and confines the appearance solely to that question of jurisdiction;² a special appearance may not be used to challenge subject matter jurisdiction.³ A general appearance is made by a party who comes into court and appears in the case in any manner except specially for the specific purpose of challenging the jurisdiction of the court over the defendant's person.⁴ A party enters a general appearance when he (1) invokes the judgment of the court on any question other than the court's jurisdiction, (2) recognizes by his acts that an action is properly pending, or (3) seeks affirmative action from the court.⁵ A general appearance occurs when a defendant takes part in the action and in some manner recognizes the authority of the court to proceed;⁶ such appearance operates as a consent to jurisdiction of his person.⁷ However, the common-law doctrine of general appearances, under which a party's general appearance in a case waives its challenge to personal jurisdiction, does not apply to subject matter jurisdiction.⁸ A nonparty that is not named in the pleadings makes a general appearance and submits to the court's personal jurisdiction by seeking affirmative relief or opposing a motion on the merits.⁹

Observation:

Whether or not a defendant has made a general or a special appearance is based upon the defendant's conduct, not upon the defendant's intent.¹⁰

A general appearance puts the defendant before the court for all purposes.¹¹ A party may waive its objection to the erroneous exercise of personal jurisdiction if the party generally appears in the case and actively prosecutes the action or contests the issues,¹² and, as a general rule, a party's general appearance will cure any defects in service occurring prior to that time.¹³ However, if a judgment has previously been entered against the defendant, the making of a general appearance does not submit him or her to the court's jurisdiction retroactively and personal jurisdiction may be challenged.¹⁴

In order for a filing to constitute a general appearance that waives a challenge to personal jurisdiction, it must seek some sort of affirmative relief on the merits of the case.¹⁵ The test of a general appearance conferring jurisdiction over the person is whether the defendant becomes an actor in the cause.¹⁶ Filing an answer constitutes a general appearance.¹⁷ Seeking affirmative relief or opposing a motion on the merits ordinarily constitutes a general appearance,¹⁸ as does signing an agreed judgment which is entered by a court.¹⁹ Appearing as a witness in a cause does not serve as a general appearance,²⁰ nor does filing a motion for extension of time.²¹ A simple notice of appearance by counsel does not constitute a general appearance by the client and does not waive the client's claims as to lack of jurisdiction or denial of due process.²² In addition, a request for attorney's fees as part of a motion to dismiss for lack of personal jurisdiction does not constitute a general appearance.²³

A defendant waives its special appearance by failing to get a ruling on the special appearance before the trial on the merits begins or before the court adjudicates the merits of the claims against the defendant.²⁴ However, a specially appearing defendant can obtain some limited affirmative relief from the trial court concerning matters relating to the special appearance without waiving the special appearance.²⁵ The relevant inquiry when determining whether a nonresident defendant's conduct waived a special appearance is not what the court does in response to the defendant's action, but whether the defendant truly seeks any affirmative action from the court by that action.²⁶

CUMULATIVE SUPPLEMENT

Cases:

The determination of special appearance versus general appearance is based on the character of the relief sought, not by statements of intention of the party. *In re D.R.*, 39 Cal. App. 5th 583, 252 Cal. Rptr. 3d 283 (2d Dist. 2019).

Where the court has jurisdiction of the subject-matter of the action, a general appearance by the defendant waives all defects in the process or in the service of the process, or even the service of process at all. *Lawrence v. Bingham Greenebaum Doll, L.L.P.*, 599 S.W.3d 813 (Ky. 2019).

In courts of record, the nature of the act of the defendant should determine whether the defendant's appearance is special or general, for the purposes of determining whether the court has personal jurisdiction over the defendant; if the motions and pleadings of the defendant relate alone to the testing of the jurisdiction of the court over him, his appearance can only be considered to be special, and not general. [Lawrence v. Bingham Greenebaum Doll, L.L.P.](#), 599 S.W.3d 813 (Ky. 2019).

One who invokes the power of the court on an issue other than the court's jurisdiction over one's person makes a general appearance so as to confer on the court personal jurisdiction over that person. [In re Estate of Marsh](#), 307 Neb. 893, 951 N.W.2d 486 (2020).

When a defendant participates in a lawsuit on the merits, he or she indicates an intention to submit to the court's jurisdiction over the action, and by appearing informally in this manner, the defendant confers in personam jurisdiction on the court. [JPMorgan Chase Bank, National Association v. Lee](#), 186 A.D.3d 685, 129 N.Y.S.3d 507 (2d Dep't 2020).

Filing of a notice of appearance in an action by a party's counsel serves as a waiver of any objection to personal jurisdiction in the absence of either the service of an answer which raises a jurisdictional objection, or a motion to dismiss for lack of personal jurisdiction. [N.Y. CPLR § 3211\(a\)\(8\)](#). [JP Morgan Chase Bank v. Jacobowitz](#), 176 A.D.3d 1191, 111 N.Y.S.3d 391 (2d Dep't 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Johnson v. Clark](#), 131 Mont. 454, 311 P.2d 772 (1957); [Chapman v. Chapman](#), 5 A.D.2d 257, 168 N.Y.S.2d 872 (3d Dep't 1957); [In re Blalock](#), 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951); [Rogers v. Penobscot Mining Co.](#), 28 S.D. 72, 132 N.W. 792 (1911); [Swetnam v. Dalby](#), 95 Utah 74, 79 P.2d 20 (1938).
- 2 [L.V. v. I.H.](#), 123 So. 3d 954 (Ala. Civ. App. 2013); [In re Marriage of Obrecht](#), 245 Cal. App. 4th 1, 199 Cal. Rptr. 3d 438 (6th Dist. 2016); [Pace v. Pace](#), 16 So. 3d 734 (Miss. Ct. App. 2009); [Diversified Telecom Services, Inc. v. Clevinger](#), 268 Neb. 388, 683 N.W.2d 338 (2004); [State ex rel. Valles v. Brown](#), 1981-NMSC-136, 97 N.M. 327, 639 P.2d 1181 (1981); [Tobe-Williams v. New Hanover County Bd. of Educ.](#), 234 N.C. App. 453, 759 S.E.2d 680, 306 Ed. Law Rep. 558 (2014); [Guffey v. Ostonakulov](#), 2014 OK 6, 321 P.3d 971 (Okla. 2014); [Nationwide Distribution Services, Inc. v. Jones](#), 496 S.W.3d 221 (Tex. App. Houston 1st Dist. 2016).
A party who makes a special appearance for the limited purpose of challenging jurisdiction agrees to abide by that court's determination on the issue of jurisdiction. [Hawkins v. SunTrust Bank](#), 246 Cal. App. 4th 1387, 206 Cal. Rptr. 3d 681 (2d Dist. 2016), as modified on denial of reh'g, (May 4, 2016) and review denied, (July 20, 2016) and cert. denied, 137 S. Ct. 651, 196 L. Ed. 2d 524 (2017).
- 3 [Restrepo v. Alliance Riggers & Constructors, Ltd.](#), 441 S.W.3d 453 (Tex. App. El Paso 2014).
- 4 [Sims v. Sims](#), 229 So. 3d 769 (Ala. Civ. App. 2016); [Kline v. Kline](#), 221 Ariz. 564, 212 P.3d 902 (Ct. App. Div. 1 2009); [Fireman's Fund Ins. Co. v. Sparks Const., Inc.](#), 114 Cal. App. 4th 1135, 8 Cal. Rptr. 3d 446 (4th Dist. 2004); [Bickel v. Subway Development of Chicagoland, Inc.](#), 354 Ill. App. 3d 1090, 290 Ill. Dec. 884, 822 N.E.2d 469 (5th Dist. 2004); [Pierce v. Pierce](#), 132 So. 3d 553 (Miss. 2014); [Williams v. Thompson](#), 489 S.W.3d 823 (Mo. Ct. App. E.D. 2015); [Burns v. Burns](#), 293 Neb. 633, 879 N.W.2d 375 (2016); [Tobe-Williams v. New Hanover County Bd. of Educ.](#), 234 N.C. App. 453, 759 S.E.2d 680, 306 Ed. Law Rep. 558 (2014); [In re Quinones](#), 2017 WL 3225015 (Tex. App. El Paso 2017).
- 5 [Restrepo v. Alliance Riggers & Constructors, Ltd.](#), 538 S.W.3d 724 (Tex. App. El Paso 2017).
- 6 [In re R.L.](#), 4 Cal. App. 5th 125, 208 Cal. Rptr. 3d 523 (4th Dist. 2016).

- 7 In re Marriage of Obrecht., 245 Cal. App. 4th 1, 199 Cal. Rptr. 3d 438 (6th Dist. 2016); Schweigert v. Schweigert, 2015 OK 20, 348 P.3d 696 (Okla. 2015); Federal Nat. Mortg. Ass'n v. Malinou, 101 A.3d 860 (R.I. 2014).
- 8 Harvey v. Ute Indian Tribe of Uintah and Ouray Reservation, 2017 UT 75, 2017 WL 5166885 (Utah 2017).
- 9 Canaan Taiwanese Christian Church v. All World Mission Ministries, 211 Cal. App. 4th 1115, 150 Cal. Rptr. 3d 415 (6th Dist. 2012).
- 10 Rhino Metals, Inc. v. Craft, 146 Idaho 319, 193 P.3d 866 (2008).
- 11 Boyd v. Kobierowski, 283 S.W.3d 19 (Tex. App. San Antonio 2009).
- 12 Regents of University of California v. Golf Marketing, LLC, 92 Conn. App. 378, 885 A.2d 201 (2005); Horton v. Horton, 179 So. 3d 459 (Fla. 1st DCA 2015); In re T.H., 2012 ND 38, 812 N.W.2d 373 (N.D. 2012); State ex rel. Oklahoma Bar Ass'n v. Mothershed, 2011 OK 84, 264 P.3d 1197 (Okla. 2011), as corrected, (Oct. 18, 2011).
- 13 Dr. JKL Ltd. v. HPC IT Education Center, 749 F. Supp. 2d 1038 (N.D. Cal. 2010); D.D. v. Calhoun County Dept. of Human Resources, 81 So. 3d 377 (Ala. Civ. App. 2011); ViaView, Inc. v. Retzlaff, 1 Cal. App. 5th 198, 204 Cal. Rptr. 3d 566 (6th Dist. 2016), review denied, (June 14, 2017) and review denied and review denied; Brown v. Fokes Properties 2002, Inc., 283 Ga. 231, 657 S.E.2d 820 (2008); In re J.D.L., 199 N.C. App. 182, 681 S.E.2d 485 (2009); Federal Nat. Mortg. Ass'n v. Malinou, 101 A.3d 860 (R.I. 2014); In Interest of D.M.B., 467 S.W.3d 100 (Tex. App. San Antonio 2015).
Letter transmitted to district court clerk's office by employer identified parties, case, and employer's current address, and, thus, constituted a general appearance that waived any deficiencies in employee's citations and the return, for purposes of employee's personal injury lawsuit against employer. Ibrahim v. Young, 253 S.W.3d 790 (Tex. App. Eastland 2008).
- 14 Wilson v. TelOptic Cable Const. Co., Inc., 314 Ill. App. 3d 107, 247 Ill. Dec. 126, 731 N.E.2d 899 (1st Dist. 2000).
- 15 Segalis v. Roof Depot USA, LLC, 178 So. 3d 83 (Fla. 4th DCA 2015).
- 16 Williams v. Thompson, 489 S.W.3d 823 (Mo. Ct. App. E.D. 2015).
- 17 Scott v. Hawit, 211 Md. App. 620, 66 A.3d 60 (2013); Stunzi v. Medlin Motors, Inc., 214 N.C. App. 332, 714 S.E.2d 770 (2011); In Interest of A.L.H., 515 S.W.3d 60 (Tex. App. Houston 14th Dist. 2017), review denied, (May 12, 2017); Zedan v. Westheim, 60 Va. App. 556, 729 S.E.2d 785 (2012).
- 18 Serrano v. Stefan Merli Plastering Co., Inc., 162 Cal. App. 4th 1014, 76 Cal. Rptr. 3d 559 (2d Dist. 2008).
- 19 In re C.R.B., 256 S.W.3d 876 (Tex. App. Texarkana 2008).
- 20 In re Suarez, 261 S.W.3d 880 (Tex. App. Dallas 2008).
- 21 In re Marriage of Obrecht., 245 Cal. App. 4th 1, 199 Cal. Rptr. 3d 438 (6th Dist. 2016) (request for continuance to file responsive pleading); Green Emerald Homes, LLC v. PNC Bank, N.A., 207 So. 3d 1027 (Fla. 5th DCA 2017).
- 22 Green Emerald Homes, LLC v. PNC Bank, N.A., 207 So. 3d 1027 (Fla. 5th DCA 2017).
- 23 Gognat v. Ellsworth, 224 P.3d 1039 (Colo. App. 2009), judgment aff'd, 259 P.3d 497 (Colo. 2011).
- 24 Kehoe v. Pollack, 526 S.W.3d 781 (Tex. App. Houston 14th Dist. 2017).
- 25 First Oil PLC v. ATP Oil & Gas Corp., 264 S.W.3d 767 (Tex. App. Houston 1st Dist. 2008).
- 26 Global Paragon Dallas, LLC v. SBM Realty, LLC, 448 S.W.3d 607 (Tex. App. Houston 14th Dist. 2014).

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4 Am. Jur. 2d Appearance § 3

American Jurisprudence, Second Edition | May 2021 Update


Appearance

Marie K. Pesando, J.D.

§ 3. General or special appearance—Abolition of distinction

[Topic Summary](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Appearance](#)  9(1) to 10

A.L.R. Library

[Litigant's participation on merits, after objection to jurisdiction of person made under special appearance or the like has been overruled, as waiver of objection, 62 A.L.R.2d 937](#)

[Motion to vacate judgment or order as constituting general appearance, 31 A.L.R.2d 262](#)

Forms

Forms relating to withdrawal of appearance, see Am. Jur. Pleading and Practice Forms, Appearance [\[Westlaw®\(r\) Search Query\]](#)

[Rule 12\(b\) of the Federal Rules of Civil Procedure](#)¹ and comparable state statutes or rules have abolished the distinction between general and special appearances in courts where such rules are in effect.² All objections to jurisdiction, venue, and process may be set up in a motion or answer without waiving any of them,³ and even after the trial court denies jurisdictional defenses, the defendant can defend the action on the merits while continuing to preserve its jurisdictional objections.⁴ Other jurisdictions may recognize the hybrid motion to quash and dismiss as a proper means of challenging the court's authority without making a general appearance,⁵ or that the subsequent or simultaneous filing of an answer, before the trial of an exception based on improper venue or the like, does not waive the pending exception, even though the subsequent filing of an answer can be

considered a general appearance.⁶ However, some states still appear to recognize the distinction between general and special appearances, and a defendant who makes a general appearance and does not initially contest solely the exercise of in personam jurisdiction cannot thereafter raise the issue.⁷ In other states, a party need not enter a special appearance in order to raise issues regarding personal jurisdiction or defects in service, but must still raise such issues at the earliest possible time.⁸

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Footnotes

- 1 Fed. R. Civ. P. 12(b).
- 2 Neifeld v. Steinberg, 438 F.2d 423, 8 U.C.C. Rep. Serv. 897, 17 A.L.R. Fed. 374 (3d Cir. 1971); Bjorgo v. Weerden, 342 F.2d 558 (7th Cir. 1965); Creel v. Gator Leasing, Inc., 544 So. 2d 936 (Ala. 1989); Fausett v. Host, 315 Ark. 527, 868 S.W.2d 472 (1994); Fisher v. Keller Industries, Inc., 485 N.W.2d 626 (Iowa 1992) (abrogated on other grounds by, Thomas v. Hansen, 524 N.W.2d 145 (Iowa 1994)); Anderson v. Mikel Drilling Co., 257 Minn. 487, 102 N.W.2d 293, 1 A.L.R.3d 605 (1960); Jones v. Chandler, 592 So. 2d 966 (Miss. 1991); State ex rel. White v. Marsh, 646 S.W.2d 357 (Mo. 1983); Wamsley v. Nodak Mut. Ins. Co., 2008 MT 56, 341 Mont. 467, 178 P.3d 102 (2008); Capital One Bank (USA), N.A. v. Lehmann, 23 Neb. App. 292, 869 N.W.2d 917 (2015); Lynch v. Lynch, 303 N.C. 367, 279 S.E.2d 840 (1981); Moon v. Moon, 499 N.W.2d 597 (N.D. 1993); Maryhew v. Yova, 11 Ohio St. 3d 154, 464 N.E.2d 538 (1984); Easton v. Hurita, 290 Or. 689, 625 P.2d 1290 (1981); Matthies v. Knodel, 19 Wash. App. 1, 573 P.2d 1332 (Div. 1 1977); Punke v. Brody, 17 Wis. 2d 9, 115 N.W.2d 601 (1962); Gookin v. State Farm Fire and Cas. Ins. Co., 826 P.2d 229 (Wyo. 1992).
- 3 Frye v. Batavia (N. Y.) Veterans Administration Emp. Federal Credit Union No. 189, 8 F.R.D. 334 (D. D.C. 1943); Marine Bank & Trust Co. v. Hamilton Bros., Inc., 55 F.R.D. 505, 16 Fed. R. Serv. 2d 802 (M.D. Fla. 1972); Fisher v. Keller Industries, Inc., 485 N.W.2d 626 (Iowa 1992) (abrogated on other grounds by, Thomas v. Hansen, 524 N.W.2d 145 (Iowa 1994)); Knoepke v. Southwestern Ry. Co., 190 Mont. 238, 620 P.2d 1185 (1980).
A defense of lack of jurisdiction over the person may be made in a motion or answer raising other defenses that formerly would have constituted a general appearance. *Creel v. Gator Leasing, Inc.*, 544 So. 2d 936 (Ala. 1989).
Special appearances are no longer necessary when contesting jurisdiction, if the defense of lack of jurisdiction is raised in a defendant's first answer, even though the rule of civil procedure dealing with service of process provides that a court may acquire jurisdiction over any person by voluntary general appearance. *Moon v. Moon*, 499 N.W.2d 597 (N.D. 1993).
- 4 State ex rel. White v. Marsh, 646 S.W.2d 357 (Mo. 1983); Gookin v. State Farm Fire and Cas. Ins. Co., 826 P.2d 229 (Wyo. 1992).
- 5 Boisclair v. Superior Court, 51 Cal. 3d 1140, 276 Cal. Rptr. 62, 801 P.2d 305 (1990).
- 6 Bickham v. Sub Sea Intern., Inc., 617 So. 2d 483 (La. 1993).
- 7 Air Machine Com SRL v. Superior Court, 186 Cal. App. 4th 414, 112 Cal. Rptr. 3d 482 (4th Dist. 2010); McRae v. J.D./M.D., Inc., 511 So. 2d 540 (Fla. 1987); Thilman & Co. v. Esposito, 87 Ill. App. 3d 289, 42 Ill. Dec. 305, 408 N.E.2d 1014 (1st Dist. 1980); Eliason v. Devaney, 228 Neb. 331, 422 N.W.2d 356 (1988).
- 8 Department of Human Services v. M.C.-C., 275 Or. App. 121, 365 P.3d 533 (2015), review denied, 358 Or. 611, 369 P.3d 386 (2016).

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4 Am. Jur. 2d Appearance § 4

American Jurisprudence, Second Edition | May 2021 Update

Appearance

Marie K. Pesando, J.D.

§ 4. Withdrawal of appearance

[Topic Summary](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Appearance](#)  27

A.L.R. Library

[Withdrawal or vacation of appearance](#), 64 A.L.R.2d 1424

Forms

Forms relating to withdrawal of appearance, see Am. Jur. Pleading and Practice Forms, Appearance[[Westlaw®\(r\) Search Query](#)]

The right to withdraw an appearance is ordinarily subject to certain conditions or limitations, such as leave of court,¹ or a showing of good cause.² And there are some statements to the effect that a regularly entered appearance cannot be withdrawn, even by leave of court.³ In any event, an appearance of the defendant cannot ordinarily be withdrawn if the withdrawal would operate to the prejudice of the plaintiff.⁴

Among the grounds for allowing leave to withdraw an appearance are—

— the appearance of a party defendant was entered without his or her authority.⁵

— the appearance was made or induced by fraud,⁶ mistake, or inadvertence.⁷

— the complaint was amended in a material respect after entry of the appearance.⁸

Leave to withdraw has been denied as not warranted by the showing in support of the application, or on the ground that it would be unjustly prejudicial to the plaintiff.⁹

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Footnotes

- 1 Corley v. Rowan, 146 So. 2d 271 (La. Ct. App. 2d Cir. 1962); *Petition of Jacobs*, 116 Vt. 11, 68 A.2d 710 (1949); *CRB v. State, Dept. of Family Services*, 974 P.2d 931 (Wyo. 1999).
- 2 *Wilson v. Barry*, 102 Cal. App. 2d 778, 228 P.2d 331 (3d Dist. 1951).
- 3 *Phillips v. The Maccabees*, 50 S.W.2d 478 (Tex. Civ. App. Waco 1932).
- 4 *Laseter v. C.I.T. Corporation*, 228 Ala. 19, 152 So. 607 (1933); *Athens v. Ernst*, 342 Ill. App. 357, 96 N.E.2d 643 (1st Dist. 1950).
- 5 *Chapline v. North Am. Acceptance Corp.*, 25 Ariz. App. 465, 544 P.2d 682 (Div. 2 1976); *Neihaus v. Superior Court*, 69 Cal. App. 3d 340, 137 Cal. Rptr. 905 (3d Dist. 1977); *Hervis v. Valdez*, 381 So. 2d 733 (Fla. 3d DCA 1980); *St. Lucie Estates v. Palm Beach Plumbing Supply Co.*, 101 Fla. 205, 133 So. 841 (1930); *Hahn v. Wiggins*, 23 Ill. App. 2d 391, 163 N.E.2d 562 (1st Dist. 1959); *Hampton v. Sharp*, 447 S.W.2d 754 (Tex. Civ. App. Houston 1st Dist. 1969), writ refused n.r.e., (Mar. 25, 1970).
- 6 *Hahn v. Wiggins*, 23 Ill. App. 2d 391, 163 N.E.2d 562 (1st Dist. 1959); *Kaiser v. Butchart*, 197 Minn. 28, 265 N.W. 826 (1936).
- 7 *Hahn v. Wiggins*, 23 Ill. App. 2d 391, 163 N.E.2d 562 (1st Dist. 1959); *Baker v. Baker*, 248 Iowa 361, 81 N.W.2d 1, 64 A.L.R.2d 1421 (1957); *International Development Co. v. Sanger*, 75 Wash. 546, 135 P. 28 (1913).
But a claim that a general appearance was filed by “inadvertence” did not constitute a showing of good cause for its withdrawal, where the defects in process could have been discovered by counsel prior to the entry of the general appearance and its withdrawal would have the effect of divesting the trial court of jurisdiction and barring plaintiff’s remedy without any hope of a trial on the merits. *Johnson v. Zoning Bd. of Appeals of Town of Branford*, 166 Conn. 102, 347 A.2d 53 (1974).
- 8 *Hahn v. Wiggins*, 23 Ill. App. 2d 391, 163 N.E.2d 562 (1st Dist. 1959).
- 9 *Johnson v. Zoning Bd. of Appeals of Town of Branford*, 166 Conn. 102, 347 A.2d 53 (1974); *Athens v. Ernst*, 342 Ill. App. 357, 96 N.E.2d 643 (1st Dist. 1950); *Davis Bakery v. Dozier*, 139 Va. 628, 124 S.E. 411 (1924).

End of Document

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4 Am. Jur. 2d Appearance Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Appearance
Marie K. Pesando, J.D.

[Topic Summary](#)

Correlation Table

Appearance

2007	2018
1	§1
2	§2
3	§3
4	§4

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